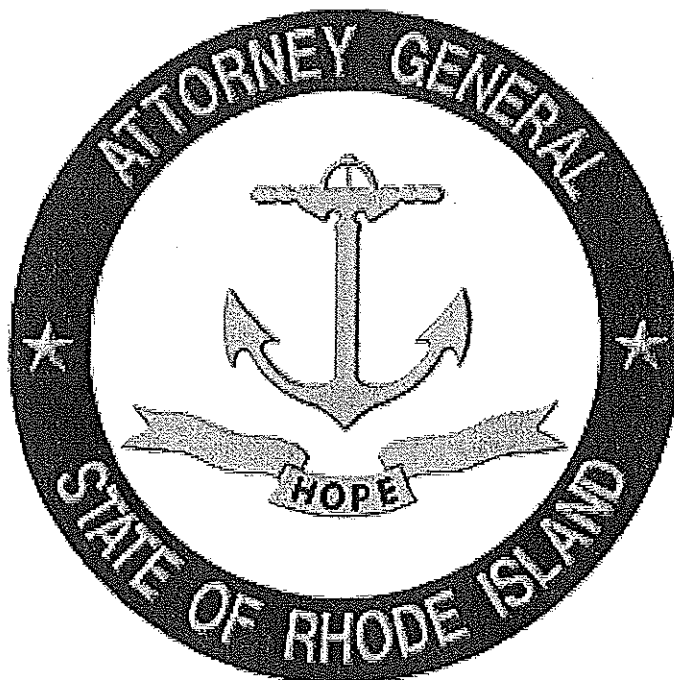


STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

DEPARTMENT OF THE ATTORNEY GENERAL



OPEN MEETINGS ACT
AND
ACCESS TO PUBLIC RECORDS ACT

2008 ANNUAL REPORT

Attorney General Patrick C. Lynch

**Open Meetings Act
Annual Report
2008**

ATTORNEY GENERAL'S ANNUAL REPORT
OF COMPLAINTS RECEIVED PURSUANT TO
RHODE ISLAND GENERAL LAWS SECTION 42-46-1 ET. SEQ.,
THE OPEN MEETINGS ACT

Rhode Island General Laws Section 42-46-11 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Open Meetings Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. The Attorney General is pleased to submit the following information concerning the calendar year 2008.

STATISTICS

OPEN MEETINGS ACT COMPLAINTS RECEIVED:	45
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	52
VIOLATIONS FOUND:	23
WARNINGS ISSUED:	23
LITIGATION INITIATED:	0
ADVISORY OPINIONS:	2
REQUESTS RECEIVED:	2
ISSUED:	1

VIOLATIONS FOUND/WARNINGS ISSUED

The Attorney General issued warnings in the following cases as a result of having found that they violated the Open Meetings Act:

1. Ricci v. Rhode Island Resource Recovery Corporation
2. Smithfield Republican Town Committee et al. v. Smithfield Town Council
3. Goodman v. Charlestown Town Council
4. Vacca v. Coventry Town Council
5. Kelly v. Cumberland School Committee
Kelly v. Cumberland School Committee II
Kelly v. Cumberland School Committee III
Kelly v. Cumberland School Committee V
Kelly v. Cumberland School Committee VI

6. Albion Fire District Taxpayers Association v. Albion Fire District
7. Kenney v. Hopkinton Town Council
8. DiModica v. Cumberland School Committee
9. Prata v. North Kingston Ground Water Committee
10. DaSilva v. North Providence School Committee
11. Riley v. East Providence Board of Canvassers
12. Kelly v. Cumberland School Committee
MacBeth v. Cumberland School Committee
Vela v. Cumberland School Committee
13. Brien v. Rhode Island Real Estate Appraisers Board
14. Nye v. Warwick Minimum Housing Board of Review
15. Seamans v. Rhode Island School for the Deaf
16. Fontaine v. Woonsocket Personnel Board
17. Reilly v. Providence Board of Park Commissioners
18. Reilly v. Providence School Board
19. Hopson v. North Providence School Committee
20. Murphy et al. v. Board of Public Safety [Warwick]
21. Romano v. Town of Exeter
22. Staven v. Portsmouth Town Council
23. Amarantes v. Tiverton Town Council

VIOLATIONS FOUND/LAWSUIT FILED

None

* * *

Summaries of all findings/written advisory opinions
issued are attached hereto.

OPEN MEETINGS ACT FINDINGS – 2008

OM 08-01 Concerned Parents of Graniteville School v Johnston School Committee

Complainant alleged that the School Committee violated the OMA at its February 27, 2007 meeting when it discussed "closing" or "restructuring" certain schools in Johnston. Complainant contended that the topic in question was not advertised on the agenda for the School Committee's February 27, 2007 meeting. The School Committee responded by stating that the budget process, which was properly noticed, provided sufficient notice and that each budget item did not need independent notice. In finding no violation, this Department cited LeMay v. North Kingstown School Committee, OM 05-08. In LeMay, this Department determined that when the topic of "budget" is noticed on an agenda, there is no requirement for the public body to specify each line item that would be discussed.

Issued: January 3, 2008.

OM 08-02 Mageau v. Charlestown Town Council

Complainant alleged that the Town Council violated the OMA because the agenda advertised in advance of the October 9, 2007 meeting "lacked sufficient notice and was misleading to the public" with regard to four (4) items. After investigating the allegations, this Department found no violation. The items listed on the agenda pertained to the issues discussed at the meeting.

Issued: January 4, 2008.

OM 08-03 Robinson v. Newport City Council

Complainant alleged that at the April 18, 2007 City Council meeting, the City Council inappropriately convened into executive session to discuss a sewer contract with the Town of Middletown. The City responded that the meeting was properly posted and appropriate under R.I. Gen. Laws § 42-46-5(a)(2) to discuss potential litigation. Upon review of the evidence, this Department determined that no violation occurred because notice for the executive session was properly advertised and the discussions pertained to potential litigation.

Issued: January 9, 2008.

OM 08-04 Ricci v. Rhode Island Resource Recovery Corporation

Complainant contended that the RIRRC violated the OMA at its January 5, 2007 and March 15, 2007 meetings when it discussed the

topic of Jefferson Renewable Energy. Specifically, the complainant alleged that the RIRRC failed to adequately advertise the nature of the business to be discussed in executive session, failed to meet the procedural requirements of convening into executive session, and/or failed to properly apprise the public of discussions held/votes taken in executive session. After concluding our investigation, this Department determined that the RIRRC committed multiple OMA violations. In particular, we found that the RIRRC failed to properly advertise and convene into executive session to discuss Jefferson Renewable Energy at its March 15, 2007 meeting.

VIOLATION FOUND.

Issued: January 9, 2008.

OM 08-05 Smithfield Republican Town Committee et al. v. Smithfield Town Council

Complainant alleged that the Town Council violated the OMA when it met "behind closed doors" with certain town officials at the "Annual Public Budget Hearing" on April 23, 2007 (continued from April 10th). Complainant represented that it was "told that during this meeting, a detailed discussion concerning the budget was conducted[,] and that the discussion was not appropriate for executive session. The Town Council acknowledged that certain Town Council members and Town officials met multiple times prior to the meeting. However, the Town Council contended that at no time did a quorum of the Town Council meet to discuss the budget. This Department found that through the series of discussions prior to the Town Council meeting, the Town Council committed a "rolling" or "walking" quorum violation because there was a collective discussion occurring among a quorum of the Town Council members, albeit not at the same time or location.

VIOLATION FOUND.

Issued: January 11, 2008.

OM 08-06 Langseth v. Rhode Island Airport Corporation
Langseth v. Rhode Island Airport Corporation II

Complainant's first complaint alleged that the RIAC violated the OMA when it inadequately advertised the agenda for the January 24, February 21 and April 11, 2007 meetings. After reviewing the RIAC's agendas for its January 24, 2007, February 21, 2007 and April 11, 2007 meeting, we found no violation. In particular, we observed that all three agendas indicated that the RIAC sought to convene into executive session pursuant to R.I. Gen. Laws § 42-46-

5(a)(2) for potential litigation relating to the Environmental Impact Statement.

Complainant's second complaint alleged that the RIAC violated the OMA when it "met in a closed, executive session billed as a retreat in the newspapers on Friday, May 11, 2007, at 9:00 a.m. in the Angel Room at the Providence Marriott." Upon review of the evidence, we found no violation. Specifically, R.I. Gen. Laws § 42-46-5(a)(5) permitted the RIAC to convene an executive session to discuss the acquisition of residential and commercial properties.

Issued: January 14, 2008.

OM 08-07 **Goodman v. Charlestown Town Council**

Complainant alleged that the Town Council violated the OMA when it inappropriately discussed the Town Solicitor's contract in executive session at a March 12, 2007 meeting. Complainant relayed that the Town Council cited R.I. Gen. Laws § 42-46-5(a)(2) as its legal basis to enter into executive session. This Department determined that the Town Council violated the OMA because R.I. Gen. Laws § 42-46-5(a)(2) does not apply if an individual is representing their own interests in contract negotiations. See In re Portsmouth School Committee, ADV OM 04-05. However, we noted that if the Town Council cited R.I. Gen. Laws § 42-46-5(a)(1), the matter could have been discussed in executive session. Therefore, no remedy was appropriate.

VIOLATION FOUND.

Issued: January 15, 2008.

OM 08-08 **Frost v. Warren Town Council**

Complainant alleged that the Town Council violated the OMA when it met in executive session on March 13, 2007 and March 31, 2007 to "discuss Robert M. Frost's property, zoning, and commercial dock." Specifically, the complainant contended that R.I. Gen. Laws § 42-46-5(a)(2) did not apply because there was no on-going litigation with the Town. The Town responded that "a contested matter currently is underway before the [CRMC] in which the [Town] has objected to the extension of a CRMC Assent sought by Mr. Frost and the CRMC has issued Mr. Frost a Cease and Desist Order." Because it appears that there was a contested matter between the Town and Mr. Frost, there was no violation.

Issued: January 18, 2008.

OM 08-09 Vacca v. Coventry Town Council

Complainant alleged that the Town Council violated the OMA when it inadequately advertised an item on its agenda for the September 24, 2007 meeting. The complainant indicated that the agenda for the item indicated that it would be "tabled." In our opinion, by indicating "tabled," the published notice seemed to imply that the noticed item would be continued to a future date. Because a vote was taken, injunctive relief would be appropriate. However, this Department allowed the Town Council thirty (30) days to null and void the vote taken and then to re-consider and re-vote on it at a properly noticed meeting. The Town Council complied with our finding.

VIOLATION FOUND.

Issued: January 18, 2008.

OM 08-10 O'Keefe et al. v. South Kingstown Town Assessor

Complainants alleged that the Town Assessor violated the OMA by holding hearings on the tax reassessments in private. The Town responded that the instant allegations "do not involve either a 'public body' or a 'meeting' as defined in R.I. Gen. Laws § 42-46-2 and, thus, the OMA rules are not applicable." Based upon the evidence presented, these private "meetings" at issue did not include town officials, but only included the independent contractor hired by the Town of South Kingstown to conduct the revaluation. Therefore, there was no violation because the OMA was never implicated.

Issued: January 24, 2008.

OM 08-11 Kelly v. Cumberland School Committee
Kelly v. Cumberland School Committee II
Kelly v. Cumberland School Committee III
Kelly v. Cumberland School Committee V
Kelly v. Cumberland School Committee VI

In the first complaint, Mr. Kelly alleged that the School Committee violated the OMA at its February 8, 2007 meeting because the subject matter of the executive session, i.e., a former employee, "was no longer a member of either the CTA or ICSE bargaining units" and therefore not subject to R.I. Gen. Laws § 42-46-5(a)(1). On prior occasions, this Department interpreted R.I. Gen. Laws § 42-46-5(a)(1) in accordance with its plain and ordinary meaning. See In re East Greenwich School Committee, ADV OM 06-02 ("the term 'person(s)' should be defined consistent with its plain and ordinary language to mean all 'persons'"). Accordingly, we found

no violation as to this allegation. However, we concluded that the School Committee violated the OMA by failing to disclose its executive session vote upon reconvening into open session.

As to the remaining complaints, they all contained a similar issue and related to the School Committee's meetings dated April 26, 2007, May 24, 2007, August 30, 2007, and September 20, 2007. During all of these meetings, Mr. Kelly contended that the School Committee violated the OMA by discussing matters that, although properly noticed for a subcommittee meeting, were not properly posted for the School Committee's meeting. There was no question that Mr. Kelly attended all the meetings at issue, and therefore, pursuant to Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002), Mr. Kelly was not "aggrieved" as required. VIOLATION FOUND.

Issued: January 28, 2008.

OM 08-12 Albion Fire District Taxpayers Association v. Albion Fire District
Complainant alleged that the Fire District committed multiple OMA violations when it convened unannounced closed session meetings without public notice. Complainant also contended that the Fire District's monthly agendas merely indicate "Closed Session if necessary" and did not indicate a statement specifying the nature of the business to be discussed. In another allegation, complainant related that on April 14, 2007, there was an awards banquet at the Fire District and "the Fire Commissioners attended, making this a matter for a posting of a public meeting." Based upon the evidence presented, there was no evidence that the Fire District convened unannounced closed session meetings. However, the Fire District violated the OMA by not adequately and timely posting notice of executive sessions. Although we found violations of the OMA, there was no evidence that demonstrated that the violation was willful or knowing.

VIOLATION FOUND.

Issued: January 31, 2008.

OM 08-13 Langseth v. Rhode Island Airport Corporation
Complainant alleged that the RIAC violated the OMA when it "appears to [have held] another closed meeting between [the Corporation] and the FAA that occurred in September, 2007." The RIAC responded that on September 6, 2007, Corporation and FAA "staff members met for the purpose of discussing a variety of airport issues [and] [t]he [Corporation] Board of Directors was not

invited nor did any Board members attend this meeting." Based upon the evidence presented, we find no violation. As the RIAC observed, previously this Department determined that a conglomeration of staff members does not constitute a public body for purposes of the OMA. See Weaver, OM 98-10.

Issued: February 7, 2008.

OM 08-14 **Kenney v. Hopkinton Town Council**

Complainant alleged that the Town Council violated the OMA during its October 15, 2007, and November 5, 2007 meetings. Specifically, complainant related that at the November 5, 2007 meeting, "during the 1st public forum, items concerning the Building Committee and the 2010 referendum were discussed between 3 of the 4 councilors present, as well as at least one audience member." After a member of the public spoke during the Public Forum agenda item concerning a topic of his choice, the videotape reveals that three of the four Town Council members spoke concerning a topic of their choosing. The topic addressed by the Town Councilors was not in response to the topic addressed by the citizen speaker. Based upon these facts, we did not believe the recently enacted R.I. Gen. Laws § 42-46-6(d) controls in this situation. In particular, R.I. Gen. Laws § 42-46-6(d) allows a public body, or its members, to "respond[] to comments initiated by a member of the public." In contrast to the October 15, 2007 Public Forum, on November 5, 2007, the Town Council members were not "responding to comments initiated by a member of the public." Instead, the Town Council members themselves initiated these comments. Accordingly, we found that the Town Council violated the OMA.

VIOLATION FOUND.

Issued: February 8, 2008.

OM 08-15 **Giarrusso v. Cranston School Committee**

Complainant alleged that the School Committee violated the OMA on August 20, 2007 when it adjourned to executive session and "[d]uring this session[,] the character and potential job performance of Mr. Giarrusso was discussed with respect to the hiring of a high school boys' cross country coach." Complainant related that "[a]t no time was notification given to Mr. Giarrusso advising him that he could request the discussion to be held in an open meeting." We reviewed the sealed executive session minutes/audio tape and observed that Mr. Giarrusso's name was mentioned several times during an approximate thirty (30) minute executive session,

including several consecutive minutes devoted to discussing Mr. Giarrusso in some detail. In this case, the evidence established that the person who the Cranston School Committee intended to discuss in executive session was provided advanced written notice pursuant to R.I. Gen. Laws § 42-46-5(a)(1) and elected not to have the discussion occur in open session. Based upon this evidence, even if Mr. Giarrusso was provided advanced written notice and elected to have the discussion in open session, Barrs v. Westerly School Committee, OM 94-23 and In re Warwick Police Department, ADV OM 99-13, would have permitted the School Committee to discuss this subject-matter in executive session, just as it did.

Issued: February 20, 2008.

OM 08-16 **Yazback v. North Smithfield Town Council**

Complainant alleged that the Town Council violated the OMA when it discussed the two-tiered tax rate plan outside a public meeting. After reviewing the evidence, although there were two conversations between Town Council members technically constituting a majority of the Town Council, these conversations did not violate the OMA because we were presented with no evidence that any action was taken or planned during these conversations, nor did we believe that a discussion to determine when information would be distributed to Council members, without more, violated the OMA.

Issued: February 21, 2008.

OM 08-17 **Prata v. North Kingstown School Committee**

Complainant alleged that the School Committee violated the OMA at the August 22, 2007 meeting when it met in executive session to discuss and act upon multiple matters related to retention of the (interim and new) School Superintendent(s). Specifically, complainant alleged that the advertised agenda item(s) provided inadequate notice to the public of the nature of the business to be discussed in closed session. We concluded that the evidence demonstrated that the School Committee sought to table all Superintendent related discussions and that the limited discussions that occurred were brief, non-substantive and short-lived due to the School Committee's desire to table discussions. Therefore, we concluded that the School Committee did not violate the OMA. We note that although the Superintendent's contract negotiation had the improper executive session citation, the School Committee

recognized this error prior to discussing the contract negotiations and heeded advice from its legal counsel to postpone discussion.
Issued: February 25, 2008.

OM 08-18 **Cote v. Town of South Kingstown**

Complainant alleged that the Town violated the OMA when it discussed/negotiated the 2008 health care contract behind closed doors with Blue Cross/Blue Shield. We found no violation of the OMA because the OMA did not apply. In particular, we observed that we had not been provided evidence that a "public body" as defined by the OMA ever met and voted on the issue in dispute. The Finance Director, by himself, is not a public body. See Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997). Contrary, it appeared that the Finance Director for the Town entered into these contracts without the approval of the Town Council or other supervisory public body. Accordingly, because a "quorum" of a "public body" did not convene a "meeting[.]" we had no jurisdiction under the OMA to review the allegations.
Issued: February 25, 2008.

OM 08-19 **Matarese v. Foster Town Council**

Complainant alleged that the Town Council violated the OMA because the posted agenda simply listed "Treasurer." Complainant contended that the agenda more appropriately should have stated "Appointment of Temporary Treasurer and Setting of Salary for Temporary Treasurer." The evidence revealed that the complainant attended the meeting at issue. Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002) makes clear that "[t]he burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice." Graziano, 810 A.2d at 222. Therefore, considering our mandate and the evidence before us, after much consideration, we concluded that the complainant was not an "aggrieved" citizen. In doing so, we noted that the complainant was a member of the Town Council, in attendance at the instant meeting, and voted against the appointment of the Temporary Treasurer.
Issued: February 29, 2008.

OM 08-20 **Boyden v. Foster Town Council**

Complainant alleged that the Town Council violated the OMA on November 14, 2006 when newly elected members of the Town Council "appointed a 'transition team' of five residents to 'evaluate town employees and solicit and review new applications for all

town positions'." In sum, complainant contended that the Town Council and/or its members-elect violated the OMA when it met "without public notice, in a closed meeting and conducted town business...." In finding no violation, we observed that at no time did a quorum of the Town Council (either newly elected or incumbent members) appoint or form the Transition Team. See In Re Foster Town Council, OM 06-54 ("Since all of these discussions occurred prior to their November 2004 election, the OMA simply did not regulate the actions of these then-candidates, and accordingly, we find no OMA violation here"). Moreover, the Transition Team did not meet on November 14, 2006. The evidence demonstrates that the first meeting of the Transition Team was on November 19, 2006.

Issued: February 29, 2008.

OM 08-21 **Riley v. East Providence Canvassing Board**

Complainant stated that at the September 12th Canvassing Board meeting it was revealed to him that two members of the Canvassing Board, a quorum, collectively discussed the matter of missing voter files outside the public purview sometime "in April." Based on this information, complainant alleged that these Canvassing Board members violated the OMA by meeting in private on a matter of Board business. Subsequently, Mr. Riley insisted that one of the Board members, "Ms. Callahan [,] did not resign from the Canvassing Board until September [2007], when Mr. Barilla was appointed as her replacement." We observed that no evidence was submitted that demonstrated that a "public body" as defined by the OMA ever met and discussed the issue in dispute. The evidence indicated that Ms. O'Gara, a member of the Board, spoke with the Ms. Callahan, Clerk for the Board but not a Board member, sometime in July of 2007 regarding the missing voter files. Because Ms. Callahan was not a Board member at the time of the conversation, a "quorum" of a "public body" did not convene a "meeting[.]" Furthermore, although Mr. Riley insists that Ms. Callahan was a Board member until September 2007, this Department had been provided no evidence to support his claim. To the contrary, Ms. Callahan's letter of resignation was dated June 20, 2007.

Issued: March 13, 2008.

OM 08-22 **Bell v. Jamestown Housing Authority**

Complainant alleged that the Jamestown Housing Authority violated the OMA by not "posting all agendas. . . on the Secretary

of State's web page." The JHA did file supplemental agendas on the Secretary of State's website in accordance with R.I. Gen. Laws §42-46-6(c). However, the JHA must also post its annual notice of meetings.

Issued: March 17, 2008.

OM 08-23 **Mudge v. North Kingstown School Department**
Mudge v. North Kingstown School Committee

In separate complaints, Mr. Mudge alleged that the North Kingstown School Department, School Committee and Town violated the OMA. The School Department did not violate the OMA when it met in executive session under R.I. Gen. Laws § 42-46-5(a)(2) to conduct contract negotiations with the Principal's Association. Collective bargaining does not require the group be an organized union. Lastly, under the OMA the School Committee is allowed to meet in closed session under R.I. Gen. Laws § 42-46-5(a)(2) to discuss potential litigation. In this instance, the School Committee did not violate the OMA when it met under R.I. Gen. Laws § 42-46-5(a)(2) to discuss the collection of money owed to it from APRA requests.

Issued: March 20, 2008.

OM 08-24 **DiModica v. Cumberland School Committee**

Complainant alleged that the School Committee violated the OMA on October 26, 2006 when they voted in executive session to extend the contract of the superintendent and the vote was neither disclosed to the public nor reflected in the minutes. Complainant also questioned whether this item was properly on the agenda and voted upon. The School Committee's agenda publicly noticed that it the would convene in executive session to discuss the "Superintendent's Annual Evaluation/Objectives," thus, the School Committee could not discuss or act upon other subject matters, such as extending the superintendent's contract. Additionally, the agenda item "Central Administrators' contracts," which was to take place under R.I. Gen. Laws § 42-46-5(a)(2) was inappropriate since there was no evidence of a representative negotiating the superintendent's contract *on behalf of* the superintendent. The School Committee violated the OMA for failing to disclose its executive session vote in open session. As both the Superintendent and the School Committee were aware that the contract would be

extended there was no evidence that disclosing the vote would "jeopardize any strategy negotiation or investigation."

VIOLATION FOUND.

Issued: March 28, 2008.

OM 08-25

Prata v. North Kingston Ground Water Committee

Complainant alleged that the Committee violated the OMA by "keeping 'inaccurate minutes,' [an] inaccurate start time, [and] an agenda [that] did not sufficiently notice the public what would take place." Under the OMA, and relevant case law, agendas must be reviewed on a case-by-case basis to determine whether the agenda provides sufficient information to inform the public as to the matters to be addressed at a meeting. In this specific case, the agenda was specific enough for the business discussed and the Committee was not required to name affected businesses that might be mentioned. Because the posted agenda and the Secretary of State's website had the proper start time, the fact that the Town's website had the wrong start time was not a violation of the OMA. However, the Committee violated the OMA by failing to include the time of the meeting in the minutes. See, R.I. Gen. Laws § 42-46-7.

VIOLATION FOUND.

Issued: March 31, 2008.

OM 08-26

DaSilva v. North Providence School Committee

The School Committee violated the OMA when a quorum of the School Committee engaged in a "rolling" or "walking" discussion regarding the issuing of the statement entitled "Safety of our Students First Priority." The conversations between the various School Committee members constituted a "walking" or "rolling" quorum in violation of the OMA. Over the course of several individual telephone conversations the members came to the consensus to endorse a statement written by one Council member. These telephone calls constituted a "walking" or "rolling" quorum and violated the OMA.

VIOLATION FOUND.

Issued: April 10, 2008.

OM 08-27

The Good Five-Cent Cigar v. Student Rights and Responsibilities Committee

Ginsberg v. Student Rights and Responsibilities Committee

Complainants alleged that the Committee violated the OMA when it asked members of the public and a reporter to leave a meeting

and held an unannounced, improper executive session from which no votes or minutes were released. After investigating the allegations, this Department found no violation, at no point after the meeting adjourned did a quorum meet.

Issued: April 21, 2008.

OM 08-28 **Moreau v. Foster Town Council**

Complainant alleged that the Town Council failed to post notice of the "Director of IT" position prior to appointing an individual to this position at its July 12, 2007 meeting. Additionally, complainant alleges that a quorum of the Town Council met privately prior to the meeting in violation of the OMA. After investigating the allegations, this Department found no violations. The items listed on the agenda pertained to the issues discussed at the meeting. At no time before the meeting did a quorum of the Town Council meet before the meeting.

Issued: April 21, 2008.

OM 08-29 **Golato v. Johnston Planning Board**

The term listed on the agenda adequately advised the public as to the nature of the business to be discussed, it "fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted." The OMA only requires a statement specifying the "nature" of the business to be discussed, not a verbatim list of every potential aspect that might be discussed in relation to that topic.

Issued: April 24, 2008.

OM 08-30 **Riley v. East Providence Board of Canvassers**

In the first complaint, Mr. Riley alleged that in July of 2007, the Board violated the OMA when it decided, at an unannounced meeting, "that the polling places would be cut from twenty-six to four." Mr. Riley relayed that as a Board member, in July 2007, the Board's Clerk told him that the Board was meeting with the R.I. Board of Elections "to review the progress made in cleaning up the voting list." The Board responded that there was no Board meeting held in July 2007. However, the Board was invited to a workshop held by the R.I. Board of Elections on June 21, 2007. Based upon the evidence presented, it was clear that at the June 21, 2007 workshop with officials from the State Board of Elections, the Board did not decide to reduce the number of polling places for the March 4, 2008 Presidential Primary. Therefore, there was no violation because a quorum of the Board did not convene a meeting in June or July

2007 to discuss the number of polling places for the March 4, 2008 Presidential Primary.

In Mr. Riley's second complaint, he alleged that the Board violated the OMA when a quorum of the Board engaged in a collective discussion via electronic mail. In particular, Mr. Riley cited a discussion concerning a proposal to limit voting places. The evidence provided by Mr. Riley revealed that a series of e-mail communications occurred amongst Board members concerning matters under the supervision, control, jurisdiction, or advisory power of the Board. Therefore, we found that the Board violated the OMA. The Board was cautioned regarding its future use of e-mail and advised that this finding may serve as evidence of a willful or knowing violation in any similar future situation.

VIOLATION FOUND.

Issued: May 7, 2008.

OM 08-31 Kelly v. Cumberland School Committee
MacBeth v. Cumberland School Committee
Vela v. Cumberland School Committee

The Cumberland School Committee violated the OMA by convening into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1), and subsequently voting in executive session. According to the plain language of the OMA, a public body may convene into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1) only for "discussions" relating to the "job performance, character, or physical or mental health of a person or persons."

The School Committee also violated the OMA by failing to disclose executive session votes upon reconvening into open session since there was no evidence that disclosure would have "jeopardize[d] any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a)." Lastly, the School Committee violated the OMA when it failed to maintain or produce a copy of its executive session minutes for a specific meeting. The OMA requires that a public body create and keep minutes for all meetings

VIOLATION FOUND.

Issued: July 9, 2008.

OM 08-32 Brien v. Rhode Island Real Estate Appraisers Board

Complainant alleged that the Board violated the OMA when it discussed the Appraisal Subcommittee Report in executive session

because "it does not meet the exemption criteria established in 42-46-5." This Department determined that the Board violated the OMA because none of the ten exemptions allowed the Board to close the meeting. Rhode Island General Law § 42-46-5(a)(4) did not apply because we were presented no evidence that the Board conducted any "investigative proceedings."

VIOLATION FOUND.

Issued: May 21, 2008.

OM 08-33 **Nye v. Warwick Minimum Housing Board of Review**

Complainant alleged that the Board violated the OMA by: (1) not properly posting notice for the March 3, 2008 meeting, (2) not making available a tally of the votes taken at the March 3, 2008 meeting within two weeks of the date of the vote and (3) not making the minutes for March 3, 2008 meeting available until after thirty-five (35) days of the meeting. After reviewing the evidence, this Department found that as to allegations (1) and (3) the Board violated the OMA. Specifically, it did not properly post notice for its March 3, 2008 meeting. Furthermore, the Board violated the OMA when it failed to present evidence that the minutes for the March 3, 2008 meeting were available within thirty-five (35) days of the meeting. The clerk for the Board of Review was unable to recall the date on which the March 3rd meeting minutes were drafted and failed to produce the draft meeting minutes within the requisite time period.

VIOLATION FOUND.

Issued: July 24, 2008.

OM 08-34 **Seamans v. Rhode Island School for the Deaf**

Complainant alleged that the School violated the OMA by: (1) containing deficient Agenda at its April 8th meeting as it did not adequately post the nature of the matter to be discussed under the topic of 'Personal Matters' and (2) not notifying the complainant that his job performance, character or physical or mental health would be discussed in advance in writing, nor advising him that he may require that the discussion be held in open session. With respect to allegation (1), this Department found no violation by the School. Notice for the executive session was sufficient and the subject matter was not yet public. After reviewing the second allegation, this Department found that the School violated the OMA when it received an inappropriate update at its April 8th meeting concerning Mr. Seamans a majority of the body chose not

to speak on the matter that was properly noticed and included within the meeting.

VIOLATION FOUND.

Issued: August 15, 2008.

OM 08-35 **Fox v. East Greenwich School Committee**

Complainant alleged that the School Committee violated the OMA when a quorum of the School Committee met privately and "confer[ed] with the superintendent after a meeting, and behind a locked door." After investigating the allegations, this Department found no violation, at no point after the meeting did a quorum meet.

Issued: August 26, 2008.

OM 08-36 **Dickson v. Town of Coventry**

Complainant alleged that the Town violated the OMA when it improperly convened in executive session during a Town Council meeting. Additionally, Complainant alleged that the agenda was in violation of the OMA because the statement about the issue at hand was insufficient. After reviewing the evidence, this Department found no violation. This Department was presented with no evidence to indicate that the portion of the meeting relating to the elderly tax freeze/exemption occurred in executive session. Furthermore, this Department opine that the item listed on the agenda adequately advised the public as to the nature of the business to be discussed.

Issued: August 26, 2008.

OM 08-37 **Fontaine v. Woonsocket Personnel Board**

Complainant alleged that the Board violated the OMA by: (1) not taking a vote before going into closed session at the January 16, 2008 meeting and citing a section of the R.I. Gen. Laws that was applicable, (2) making deliberations and voting behind closed doors once the hearing was over and not announcing any votes that were made upon their return, (3) being informed by the Personnel Director that the Personnel Department would continue to certify eligibility lists "over the telephone" when the board is not in meeting and (4) not posting written notice of their regular meetings at the beginning of the year as required under 42-46-6(a). Additionally, this Department asked the Board to address the specificity of the agendas

posted on the Secretary of State's Website. After reviewing the evidence, this Department found that all allegations violated the OMA.

VIOLATION FOUND.

Issued: August 26, 2008

OM 08-38 **Violet v. Special House Commission To Study Potential Administrative and Functional Improvements at the Veterans Home**

Attorney Violet alleged that the House Commission violated the OMA by: (1) failing to provide sufficient notice to the December 19, 2007 House Commission meeting; specifically, failing to state that the House Commission would enter into executive session during that meeting, (2) failing to post to the public the change in venue of the December 19, 2007 meeting from the State House to the Mental Health Advocate's Office within forty-eight (48) hours of the meeting, (3) failing to cite the reason for entering into executive session at the December 19th meeting, (4) selectively permitting some members of the public to attend the executive session, but selectively excluding the complainant from attending and (5) failing to post minutes for any of its meeting with the Secretary of State. After reviewing all of the evidence presented to this Department, we concur that this case presents a nonjusticiable issue "against either House of the General Assembly, or any legislative committee or subcommittee thereof." Furthermore, since the OMA presents a non-justiciable issue vis a via the House Commission, the House Commission did not violate the OMA. In our opinion, any complaint should be addressed to the House of Representatives, which is the constitutional entity that may enforce its own rules.

Issued: August 27, 2008

OM 08-39 **Oliveira v. Newport School Committee**

Complainant alleged that the School Committee violated the OMA by: (1) voting to file a lawsuit to pay for a guidance counselor when this agenda item was not adequately advertised, (2) listing "Recalls" on its agenda, but failing to indicate who would be recalled, (3) failing to state on its agenda with sufficient specificity that it would vote (and not just discuss) to authorize the Superintendent to provide the school Committee with a "School Reconfiguration Plan;" and (4) failing to state on its agenda that the School Committee would vote to spend money on a regionalization

study. After reviewing the facts, this Department found no violations.

Issued: September 8, 2008

OM 08-40 **Reilly v. Providence Board of Park Commissioners**

Complainant alleged that the Board violated the OMA by: (1) violating R.I. Gen. Laws § 42-46-6 by failing to give adequate public notice for its May 9, 2008 meeting of the justification for and subject matter of the closed session, (2) violating R.I. Gen. Laws § 42-46-4 at its May 9th meeting by failing to provide adequate detail in its open call for the closed session by referring to it as a "personnel issue", (3) violating R.I. Gen. Laws § 42-46-5(a)(1) at its May 9th meeting by failing to note in the minutes that written notice had been provided to Mr. McMahon, (4) violating R.I. Gen. Laws § 42-46-6 at its May 9th meeting by failing to advertise on its agenda that the Superintendent of Parks would be "mentioned, discussed, or acted upon" and (5) violating R.I. Gen. Laws § 42-46-7 by failing to provide a record by individual members of any votes taken in its minutes for the May 9th meeting. After reviewing the evidence, this Department found that the Board violated the OMA as to all allegations.

VIOLATION FOUND.

Issued: September 11, 2008

OM 08-41 **Reilly v. Providence School Board**

Complainant alleged that the School Board violated the OMA by: (1) violating R.I. Gen. Laws § 42-46-6 by failing to give adequate public notice for its March 24, 2008 meeting of the subject matter of the closed session; violating R.I. Gen. Laws § 42-46-5 by improperly voting in closed session; violating R.I. Gen. Laws § 42-46-5 by selectively allowing certain people into executive session. This Department found the School Board violated the OMA because its notice for the executive session was insufficient. The School Board candidly acknowledges that it voted during executive session and because R.I. Gen. Laws § 42-46-5(a)(1) only allows for discussions to be held in executive session, voting was a violation. As to the last allegation, there was no evidence that the School Board selectively permitted and excluded members of the public from the March 24th executive session in a way that would circumvent the spirit or requirements of the OMA.

VIOLATION FOUND.

Issued: September 11, 2008

OM 08- 42 Dutton v. Jamestown Planning Commission
Attorney Palumbo alleged that the Commission violated the OMA when "[f]ollowing adjournment of the [May 7, 2008] meeting, [his] clients . . . observed members of the planning commission discussing the application in private in the Council Chambers at the Town Hall." After reviewing the evidence, this Department found no violation. The evidence demonstrated that after the May 7th meeting concluded, only two (2) out of the seven (7) Commission members were present during the instant discussion, and therefore, a quorum was not present and the OMA did not apply.
Issued: September 30, 2008

OM 08-43 Knight (2) v. Pawtucket School Committee
Mr. Knight alleged that the School Committee violated the OMA by voting on a "Resolution of the Pawtucket School Committee" in Executive Session. Complainant also alleged that after reviewing School Committee agendas prior to the meeting, no such reference was found. After reviewing the facts, this Department found no evidence that prior to March 25, 2008, the School Committee ever voted on this specific resolution. Therefore, we found no violation.
Issued: October 3, 2008

OM 08-44 Hopson v. North Providence School Committee
Complainant alleged that the School Committee violated the OMA by: (1) violating R.I. Gen. Laws § 42-46-6(c) by not publishing its agenda for the June 25, 2008 meeting in a newspaper of general circulation, (2) violating R.I. Gen. Laws § 42-46-6(c) when it amended the location of its June 25, 2008 executive session meeting within forty-eight (48) hours of the meeting, (3) violating R.I. Gen. Laws § 42-46-4 from January 2008 through May 2008 when it improperly entered into executive session at the School Committee meetings, (4) violating R.I. Gen. Laws § 42-46-7(b) when it failed to properly record a vote taken at the February 27, 2008 meeting, (5) violating R.I. Gen. Laws § 42-46-6 by inadequately stating the items for its June 25, 2008 executive session as well as discussing matters in executive session on June 25, 2008 that were inappropriate for a closed session and (6) violating R.I. Gen. Laws § 42-46-1 *et seq.* by convening an unadvertised meeting to discuss and/or take action on School Committee matters. After reviewing the evidence, this Department found that as to allegation (4), the School Committee violated the OMA. We noted that the School Committee candidly acknowledged that the minutes to the February 27th meeting did

not comply with the strict language of OMA and has drafted amended minutes to correct the violation. Additionally, through reviewing the facts of this case, this Department found that the School Committee violated the OMA by not properly recording the School Committee's entrance into executive session in its minutes to the February 27, 2008, March 26, 2008, April 23, 2008, May 28, 2008 or June 25, 2008 meetings, respectively.

VIOLATION FOUND.

Issued: October 17, 2008

OM 08-45 **Murphy et al. v. Board of Public Safety [Warwick]**

Complainant alleged that the BPS violated the OMA at its July 22, 2008 meeting when it added an item to its agenda on the morning of the July 22, 2008 meeting *and* voted upon this addition. By its own admission, BPS added the fireworks application to its agenda less than thirteen (13) hours before the meeting *and* they voted upon the newly added matter.

Moreover, we noted that the BPS never formally amended the agenda as required by R.I. Gen. Laws § 42-46-6(b). Therefore, this Department found that the BPS violated the OMA.

VIOLATION FOUND.

Issued: October 27, 2008

OM 08-46 **National Education Association v. Little Compton School Committee**

Complainant alleged that the School Committee violated the OMA by posting an inadequate agenda for the School Committee's July 9th meeting. After reviewing the evidence, this Department found no violation, as the evidence demonstrated adequate notice.

Issued: November 3, 2008

OM 08-49 **Romano v. Town of Exeter**

Complainant contended that at its August 5, 2008 meeting, the Town violated R.I. Gen. Laws § 42-46-6 by not properly posting notice on its agenda and R.I. Gen. Laws § 42-46-7 by not keeping a record of the vote taken at that meeting. As to the August 5th meeting, we found no violation. The OMA applies only when a quorum of a public body convenes a meeting. Here, at no time did a quorum of the Town Council discuss complainant's employment status with the Town. Additionally, complainant alleged that the same OMA allegations occurred at an unknown meeting between September 10, 2008 and September 26, 2008. We found

complainant received actual notice that her possible termination would be discussed at September 10, 2008 Town Council meeting and that she attended same. Based upon these specific facts, we respectfully concluded that complainant was not "aggrieved" by any lack of public notice as required by Graziano in regards to the September 10, 2008 meeting. The Town Council did violate the OMA because its minutes to the September 10, 2008 meeting did not record, by individual members, the vote taken with respect to this matter. Lastly, this Department concluded that the Town Council did not convene another meeting in September 2008.

VIOLATION FOUND

Issued: November 26, 2008

- OM 08-50 **Scituate Democratic Town Committee v. Scituate Town Council**
Complainant alleged that the Town Council violated R.I. Gen. Laws § 42-46-6 by failing to give adequate public notice of its April 24, 2008 meeting. Specifically, he referenced agenda item 4(2) stating "Closed pursuant to R.I.G.L. § 42-46-5(a)(2) - Pertaining to Litigation, Strategy, Options and Substantive Legal Issues." Although a public body must ordinarily give a more specific statement of what is to be discussed, because this matter was not yet public, the Town Council had the option to label the item as "R.I.G.L. § 42-46-5(a)(2)- Pertaining to Litigation, Strategy, Options and Substantive Legal Issues." See Graziano v. R.I. Lottery Commission, OM 99-06; Blais v. Burrillville Town Council, OM 07-05. Additionally, complainant contended that the topic discussed "specifically concerned pension benefits and the execution of an affidavit..." and therefore was not appropriate for closed session. Here, this Department concluded that the intent and purpose of the April 24, 2008 executive session appeared to be to discuss the possibility of litigation if the Town Council did not submit an affidavit to the Employees Retirement System of Rhode Island. Based on this factual observation, this Department noted that the Town Council appropriately entered closed session to discuss a matter concerning reasonably anticipated litigation where substantive discussions of strategy or consequences of action or inaction were necessary.

Issued: November 26, 2008

- OM 08-51 **Staven v. Portsmouth Town Council**
Complainant alleged that when the Town Council went into executive session under RIGL 42-46-5(a)(2), they improperly discussed the Town Administrator's contract in violation of this

Department's prior finding in Walsh v. Charlestown Town Council. In this case, we found that the Town Council violated the OMA by convening into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2). As made clear by Walsh, an executive session pursuant to the "collective bargaining" exemption set forth in R.I. Gen. Laws § 42-46-5(a)(2) is not permitted with "an individual who is representing their own interests." We determined the Town Council's actions were permissible pursuant to R.I. Gen. Laws § 42-46-5(a)(1) - specifically, R.I. Gen. Laws § 42-46-5(a)(1) allows an executive session for "[a]ny discussions of the job performance, character, or physical or mental health of a person or persons." Here, based upon the evidence presented, we concluded that the August 12, 2008 executive session fell within the purview of R.I. Gen. Laws § 42-46-5(a)(1).

VIOLATION FOUND

Issued: November 26, 2008

OM 08-52 **Amarantes v. Tiverton Town Council**

Complainant alleged that the Town Council violated the OMA at the July 7, 2008 meeting when it discussed and voted on an amendment to the Charter that was not on the agenda. Specifically, he alleged that the Town Council listed four (4) proposed agenda items, but did not notice the Amendment proposed by Councilman Medeiros. Consistent with Tanner, the task of this Department was to determine whether the statement of business provided by the Town Council "fairly informed the public, under the totality of the circumstances," without being misleading, that the amendment to the Town Charter proposed by Councilman Medeiros would be discussed at the July 7, 2008 meeting. Based upon the evidence presented, this Department opined that in this case it did not.

VIOLATION FOUND

Issued: December 17, 2008

OPEN MEETINGS ACT ADVISORY OPINIONS

ADV OM
08-01

In Re: Woonsocket Personnel Board Proceedings (OMA Advisory Opinion)

The Woonsocket Personnel Board asked whether "grievance hearings before the Personnel Board are allowed to be closed under RIGL § 42-46-5?" Specifically, it related that the "issue at hand is the open or closed status of non-union employees' grievances." The Board noted that "RIGL § 42-46-5(a)(9) clearly states, 'Any

hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement,' can be closed hearings." The plain language of R.I. Gen. Laws § 42-46-5(a)(9) permits a public body to convene into executive session for "[a]ny hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement." (Emphasis added). Accordingly, based upon the plain language of R.I. Gen. Laws § 42-46-5(a)(9), the relevant inquiry was whether the grievance was filed "pursuant to a collective bargaining agreement." Applying the plain language, we concluded that to trigger the exemption set forth in R.I. Gen. Laws § 42-46-5(a)(9), a grievance must be filed pursuant to a collective bargaining agreement.

Issued: May 29, 2008

END OF OMA SUMMARIES

**Access to Public Records Act
Annual Report
2008**

ATTORNEY GENERAL'S ANNUAL REPORT
OF COMPLAINTS RECEIVED PURSUANT TO
RHODE ISLAND GENERAL LAWS SECTION 38-2-1 ET. SEQ.,
THE ACCESS TO PUBLIC RECORDS ACT

Rhode Island General Laws Section 38-2-15 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Access to Public Records Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. The Attorney General is pleased to submit the following information concerning the calendar year 2008.

STATISTICS

ACCESS TO PUBLIC RECORDS ACT COMPLAINTS RECEIVED:	33
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	36
VIOLATIONS FOUND:	16
WARNINGS ISSUED:	15
LITIGATION INITIATED:	1
ADVISORY OPINIONS:	4
REQUESTS RECEIVED:	4
ISSUED:	4

VIOLATIONS FOUND/WARNINGS ISSUED

Warnings were issued in the following cases as a result of having found that they violated the Access to Public Records Act:

1. NEARI v. Foster-Glocester School Committee
2. Diomandes v. City of Newport
3. Doughty v. Providence Fire Department
4. DiModica v. Cumberland School Department
5. Hofstetter v. City of Cranston II
6. Doughty v. City of Providence

7. The Newport Daily News v. Town of Middletown
Concerned Island Taxpayers Association v. Town of Middletown
8. Rogers v. City of Pawtucket
9. Exter v. City of Cranston
10. Ambeault v. Town of Lincoln, Lincoln School Department
Azar v. Town of Lincoln
11. Knowlton v. Town of Scituate
12. Campbell v. Coastal Resources Management Council
13. St. Pierre v. Burrillville School Department
14. Ambeault (2) v. Lincoln School Department
15. Azar v. Lincoln School Department

VIOLATIONS FOUND/LAWSUIT FILED

1. Bina v. City of Cranston

* * *

Summaries of all findings/written advisory opinions
issued are attached hereto.

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2008

- PR 08-01 **Knight v. Pawtucket School Department**
Complainant was denied access to a copy of the Pawtucket Superintendent's contract. The School Department claimed that the contract was sealed in executive session; therefore it was not a public record. This Department determined that the record was exempt from disclosure because it was identifiable to an individual employee. See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I); Pawtucket Teachers Alliance v. Brady, 556 A.2d 556 (R.I. 1989).
Issued: January 4, 2008.
- PR 08-02 **NEARI v. Foster-Glocester School Committee**
Complainant made a request for "information on monies paid by the Foster-Glocester School Committee to their attorney." The School Committee violated the APRA by not responding within ten (10) business days.
VIOLATION FOUND.
Issued: January 15, 2008.
- PR 08-03 **Diomanes v. City of Newport**
Complainant alleged that the City failed to respond in a timely manner to a request for employment documents relating to the City Solicitor and the Assistant Solicitor for Law Enforcement. A second request was filed for the contract and payment information to the Chief of Police. The timeliness of the response violated the APRA since no notification of a time extension was shown. The City did not violate the APRA when it did not provide the Police Chief's contract. See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). One of the documents requested, a solicitor's worksheet, was not released and determined to be public. Document was made available.
VIOLATION FOUND.
Issued: January 18, 2008.
- PR 08-04 **Doughty v. Providence Fire Department**
Providence Fire Department violated the APRA when it failed to respond in a timely manner and when it failed to release the amount paid related to employee monitoring. Other employee monitoring information was exempt pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).
VIOLATION FOUND.
Issued: January 22, 2008.

PR 08-05 Hirons v. Rhode Island Department of Environmental Management

Complainant contended that he was improperly denied access to records by the DEM. The DEM noted Mr. Hirons' request was "unduly burdensome" and sought "any information" regarding five separate categories. This Department found that a clear denial did not exist and that the APRA was not violated because the DEM is entitled to the prepayment of costs.

Issued: January 31, 2008.

PR 08-06 DiModica v. Cumberland School Department

Mr. DiModica requested payroll records of school employees and when the School Committee failed to respond in a timely manner, a violation occurred. Two documents, the central administrators' contract and the contract for all principals, were identifiable to individual employees, and therefore, exempt. See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

VIOLATION FOUND.

Issued: January 24, 2008.

PR 08-07 Antonucci v. City of Cranston

Mr. Antonucci filed an APRA complaint against the City of Cranston because the City denied his request for investigative materials into Union and Police Administration members. After review of the materials, this Department agreed with the City and determined that the information sought was identifiable to a specific employee. Accordingly, the documents requested were exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

Issued: January 30, 2008.

PR 08-08 Leva v. Town of Johnston

Complainant alleged that the Town failed to respond to an APRA request within ten (10) business days. Specifically, the complainant initially sought minutes to a Town Council meeting, but when the Town informed her they would not be available for that day, the request was withdrawn and instead sought the stenographer's transcripts. This Department found no violation for responding in an untimely manner.

Issued: February 7, 2008.

PR 08-09

Newman v. Pawtucket Public Works Department

Mr. Newman requested a report concerning a tree at a specific Pawtucket address. Mr. Newman contended that he was informed on two occasions that a report existed, but when requested, he was told that a report did not exist. Through an affidavit, the Public Works Director attested that no such report existed. No evidence was provided that would demonstrate otherwise. The City replied with the work order of the address, the only material available, within the time period permitted by the APRA. Therefore, there was no violation.

Issued: February 13, 2008.

PR 08-10

Chappell v. Rhode Island State Police et. al.

Mr. Chappell sought documents and a compact disc detailing an altercation that occurred between Mr. Chappell, his son, and an individual Deputy Sheriff at the Kent County Courthouse. The Sheriff's Department contended that the records requested were not in their possession, hence could not be released. Moreover, records maintained by the State Police demonstrated that no charges were brought, and therefore, were exempt since disclosure would have constituted an invasion of privacy. See also R.I. Gen. Laws §§ 38-2-2 (4)(i)(A)(I); (D)(c).

Issued: February 14, 2008.

PR 08-11

Hofstetter v. City of Cranston II

Mr. Hofstetter sought records and documents that related to health issues in the new fire contract. The records were provided to Mr. Hofstetter, but not within the time period set forth in the APRA. The City violated the APRA because these documents were not provided in a timely manner.

VIOLATION FOUND.

Issued: February 14, 2008.

PR 08-12

Giarusso v. Cranston School Committee

The Cranston School Committee did not violate the APRA. The complainant alleged that the denial of minutes and recordings of executive session discussion was a violation of APRA. Since minutes were appropriately sealed, minutes and/or recordings were not public records. See R.I. Gen. Laws § 38-2-2(4)(i)(J).

Issued: February 20, 2008.

PR 08-13

The Woonsocket Call v. Burrillville School Committee

A request by The Woonsocket Call for "settlement" documents between Lee C. Malbon and the Burrillville School Committee was denied and an APRA complaint followed. The requested materials were discussed in executive session and the complainant argued since the requested documents were "approved" in executive session, they were public records. The requested documents were specifically identifiable to an individual employee, and therefore, exempt. Moreover, despite the claim that the requested documents were "settlement" documents, and therefore, public pursuant to R.I. Gen. Laws § 38-2-14, evidence indicated that a legal claim against the Town did not exist. The documents in question were not "submitted" at a public meeting.

Issued: February 29, 2008.

PR 08-14

CCRI Faculty Assoc./NEARI v. RI Board of Governor's for Higher Ed.

CCRI/NEARI was denied access to information regarding CCRI President Thomas Sepe's job performance, including a fact-finding report by the New England Association of Schools and Colleges. An executive session was held to discuss Mr. Sepe's job performance and executive session minutes were sealed. Since the requested records were identifiable to an employee, the records were exempt. See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

Issued: February 29, 2008.

PR 08-15

Sheldon v. Hopkinton Police Department

Ms. Sheldon verbally requested a list of reserve officers for the Hopkinton Police Department. No evidence was provided that demonstrated that a request was made to the Chief of Police or his secretary pursuant to the APRA. Because there was no evidence an APRA request was ever made, the Police Department did not violate the APRA.

Issued: March 13, 2008.

PR 08-16

RI Council 94 v. Office of the Governor

RI Council 94 requested the appointment logs, letters, and other office materials of the Governor that would identify with whom and when the Governor meets with appointments. The Office of the Governor allowed access to a limited number of the requested materials and then RI Council 94 filed an APRA complaint contending that unreleased materials were public record. Council 94 cited the Governor's press releases regarding open government

policy, which they argued should bind him to release daily schedules and appointment logs. The Governor's work schedules and appointment calendars were deemed exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

Issued: March 20, 2008.

PR 08-17

I. Mudge v. North Kingstown School Department

III. Mudge v. Town of North Kingstown

I. Complainant alleged the North Kingstown School Department did not respond to his APRA request for records re: Wayne Roofing within the time period set forth in the APRA. Upon review of the evidence presented in this case, this Department found no violation.

III. Mr. Mudge alleged that the Town did not fully comply with his May 12, 2006 APRA request for financial documents and purchase orders. The Town represented that all available and responsive documents were provided. Evidence led this Department to find no violation of the APRA for lack of disclosure of certain documents. The Town of North Kingstown responded in a timely manner.

Issued: March 20, 2008.

PR 08-18

Napolitano v. Albion Fire District

Mr. Napolitano alleged that the Albion Fire District violated the APRA because it imposed excessive charges and provided incomplete materials. This Department found no violation. Based upon the request, excessive charges were not found by this Department for the rate of time to fulfill Mr. Napolitano's request, nor were excessive charges assessed for coping. See R.I. Gen. Laws § 38-2-4(b).

Issued: March 28, 2008.

PR 08-19

Doughty v. City of Providence

Mr. Doughty alleged that the City failed to respond to 4 separate APRA requests. The City acknowledged its failure, but contended that the violations were not willful or knowing. The City insisted that the requests were inadvertently misplaced. Requested documents were provided to Mr. Doughty and violation was found not to be willful or knowing.

VIOLATION FOUND.

Issued: April 17, 2008.

PR 08-20

The Newport Daily News v. Town of Middletown

Concerned Island Taxpayers Association v. Town of Middletown

The Newport Daily News and the Taxpayers Association filed separate APRA complaints against the Town. Both requested a copy of the separation/severance agreement between the Town and former Town Administrator Gerald S. Kempen. The Newport Daily News claimed the request should have been fulfilled because certain provisions of the agreement constituted "other remuneration in addition to salary" and/or represented the settlement of a legal claim. See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) and § 38-2-14. The Town disagreed. This Department determined that records identifiable to an individual employee are exempt from disclosure, except for the categories listed in R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). As in Henley v. South Kingstown School District, this case related to a specific employee. See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). This Department determined that the agreement was not a "settlement" of legal claims. Additionally, even though the employee was no longer a town worker, the requested records still fell within R.I. Gen. Laws § 38-2-2(4)(i)(A)(I), and therefore, "total cost of paid fringe benefits" and "remuneration in addition to salary" should have been made public. The Town of Newport violated the APRA by not disclosing these categories. The Town was instructed to disclose portions of the severance agreement determined to be public within ten (10) business days and it subsequently complied.

VIOLATION FOUND.

Issued: April 23, 2008.

PR 08-21

Bina v. City of Cranston

The City of Cranston violated the APRA when it did not respond to a public records request within ten (10) business days. Since the City had previously provided untimely access, violation was determined to be willful and knowing. The City did not respond in any manner, as the APRA requires.

VIOLATION FOUND.

LAWSUIT FILED.

Issued: April 30, 2008.

PR 08-22

D'Amario v. RI Probation Office

Mr. D'Amario alleged that the RI Probation Office violated the APRA when it failed to respond to his APRA request. The Probation Office contends that it did not receive an APRA request from Mr. D'Amario regarding his probation file. There was no

evidence that request was received. Even if the request was made and received, requested records were exempt from disclosure. Therefore, no violation occurred.

Issued: May 20, 2008.

PR 08-23 **Rogers v. City of Pawtucket**

Ms. Rogers requested records pertaining to fees and permits for public recreational facilities owned by the City of Pawtucket. Following her initial request, Ms. Rogers orally amended her request, which was responded to on November 1, 2007. An APRA complaint was filed on November 2, 2007, alleging the City failed to respond to the request. Both parties disagree on the substance of the oral amendment. The City timely responded to her amended request, but inadvertently failed to provide one document. The failure to provide this document violated the APRA.

VIOLATION FOUND.

Issued: May 30, 2008.

PR 08-24 **Exter v. City of Cranston**

Mr. Exter requested records concerning settlement agreements between Ms. Lillian Rivera and the City of Cranston by letter dated March 18, 2008. Following his request, the City stated it was unable to release such documents due to the containment of "a provision that reflects that the settlement agreement is to be held in strict confidence." This Department found no evidence to support this statement. Accordingly, this Department found that the City violated the APRA by denying Mr. Exter's request for this public record. Additionally, subsequent to the denial of his request, Mr. Exter appealed that decision to the chief administrative officer of the City of Cranston. This Department found that the City again violated the APRA by failing to respond to Mr. Exter's appeal within ten (10) business days.

VIOLATION FOUND.

Issued: July 2, 2008

PR 08-25 **Brunetti v. Albion Fire District**

Ms. Brunetti alleged that the Albion Fire District violated the APRA when it failed to respond to her APRA request. After reviewing the facts of the case, this Department found evidence that demonstrated that Ms. Brunetti was seeking immediate access to various documents to perform her official duties, rather than seeking documents under the APRA. Additionally, evidence revealed that Ms. Brunetti filed her APRA complaint one (1) day

after this alleged denial. This Department found her APRA complaint "not ripe at the time of filing since the Fire District was not permitted ten (10) business days to comply." No violation occurred.

Issued: July 16, 2008

PR 08-26

Ambeault v. Town of Lincoln, Lincoln School Department

Azar v. Town of Lincoln

Ms. Ambeault alleged that the Town of Lincoln (and the Lincoln School Department) violated the APRA when it failed to respond to her APRA request on January 21, 2008. Additionally, Ms. Ambeault contended that sometime before January 21, 2008 she made an APRA request to the Town, from which she received an "inappropriate response from the School Department." After reviewing the facts of the case, this Department found that the Town violated the APRA by failing to respond to Ms. Ambeault's APRA request made on January 21, 2008 within ten (10) business days. While no evidence was found to contradict the Town's argument that it did not maintain the records sought, a response should have been made within the permitted time to inform Ms. Ambeault that no such records existed. Additionally, the School Department violated the APRA when it failed to respond to Ms. Ambeault's APRA request within (10) business days. While documentation was provided to Ms. Ambeault, the School Department should have informed her that the document she requested did not exist.

Ms. Azar alleged that the Town violated the APRA by: (1) responding to her first APRA request in an untimely manner and providing her with a dissatisfactory response to her request and (2) not responding to her second APRA request made on January 20, 2008. As to the first allegation, this Department found no evidence to constitute Ms. Azar's request under the APRA. Because an APRA request was not made, no violation of the APRA can occur. Additionally, this Department found evidence that demonstrated that Ms. Azar's second request dated January 20th to the Town sought the same records as her first request, and the Town had just recently responded to her request by providing records. Therefore, this Department found no violation. Ms. Azar was told that the records she sought were in the custody of the School Department.

VIOLATION FOUND.

Issued: August 14, 2008

PR 08-27

The Westerly Sun v. Town of Hopkinton

Ms. Algier from The Westerly Sun alleged that the Town of Hopkinton violated the APRA when it denied her request for "documents related to compensatory time for Hopkinton Police Department officers and dispatchers..." After reviewing the evidence, this Department found that although records reflecting paid compensatory days would be public: records detailing remaining or accrued compensatory time are not public, records under the APRA. Therefore, the Town did not violate the APRA when it denied the request for records concerning accrued compensatory time.

Issued: August 21, 2008

PR 08-28

Knowlton v. Town of Scituate

Mr. Knowlton alleged that the Town of Scituate violated the APRA by failing to respond to his June 13, 2008 APRA request, which sought "the names of each and every person from 2003 to the present who have received monies as part of the rescue system, the total amount of hours they have worked per week and the amount of monies they have received." The Town's position was that it did not possess the requested records and therefore had no obligation to respond to the request. This Department found this argument to be inconsistent with the APRA in that although it did not possess the requested records, the Town was required to respond, in writing, within ten (10) business days to indicate that it did not maintain the requested records. Therefore, the Town violated the APRA when it failed to respond to Mr. Knowlton's APRA request within ten (10) business days.

VIOLATION FOUND.

Issued: August 21, 2008

PR 08-29

Jawharjian v. Town of Johnston

Attorney Jawharjian alleged that the Town of Johnston violated the APRA when it failed to respond to an APRA request submitted by letter dated December 19, 2007. After reviewing the facts of the case, this Department found no evidence that the Town ever received the instant APRA request. No record of the instant APRA was found in the Town Clerk's records. Therefore, no violation was found.

Issued: August 26, 2008

PR 08-30

Kells v. Town of Scituate

Mr. Kells alleged that the Town of Scituate violated the APRA when it failed to provide information regarding an APRA request for certain documents evidencing payments made to a Town employee, upon his retirement. After reviewing the facts of the case, this Department acknowledged a difference in the Town's response to the complainant- a denial of records- and the Town's response to this Department- no records existed. After further investigation, this Department found no evidence that Mr. Iverson, or anyone (or entity) on his behalf, received money or other compensation from the Town upon his retirement. Therefore, no violation was found.

Issued: September 11, 2008

PR 08-31

Napolitano v. Lincoln School Department

Chairman Napolitano alleged that the Lincoln School Department violated the APRA when it failed to disclose records. Specifically, Chairman Napolitano "requested two arbitration decisions that were handed down from the American Arbitration Association by arbitrator Thomas Hogan regarding then janitor John Barr." Chairman Napolitano indicated that these decisions "were paid for with Lincoln taxpayer money" and that he believed "that these decisions occurred in or about August of 1996 and June of 1997." After reviewing the evidence, this Department found that the requested (submitted) arbitration decision is exempt from public disclosure. Specifically, this Department found that the instant arbitration decision falls squarely within the purview of R.I. Gen. Laws § 38-2-2(4)(i)(A)(I), which exempts from public disclosure "[a]ll records which are identifiable to an individual applicant for benefits, client, patient, student, or employee," as well as the Supreme Court's holding in Brady where a report evaluating the job performance of a single readily identifiable employee was deemed exempt. Therefore, this Department found no violation.

Issued: September 11, 2008

PR 08-32

O'Neill v. North Kingstown School Department/School Committee

Mr. O'Neill requested "[c]opies of invoices for legal services provided by School Committee attorney Stephen M. Robinson or any member of his firm from January 1, 2007 through January 14, 2008 including the descriptions of services performed and who ordered the services." Mr. O'Neill also requested that the School Committee "[p]lease include the names of any individuals who

contacted Mr. Robinson by phone or in person which resulted in billable hours charged to the school department." (Emphasis added). In the instant complaint, Mr. O'Neill alleged that the North Kingstown School Department/School Committee violated the APRA by denying access to the "names of any individuals who contacted Mr. Robinson by phone or in person." After reviewing the evidence, this Department noted that the legal invoices from Attorney Robinson for the time period requested did not explicitly list "the names of any individuals who contacted Mr. Robinson by phone or in person." We noted that pursuant to R.I. Gen. Laws § 38-2-3(f), a public body is not required "to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made ***." Based on the foregoing, we found no violation because the requested records- the "names of any individuals who contacted Mr. Robinson by phone or in person"- were not ascertainable on the legal invoices.

Issued: September 19, 2008

PR 08-33

Campbell v. Coastal Resources Management Council

Attorney Campbell made multiple requests to the Coastal Resources Management Council (CRMC). After reviewing the evidence of the case, this Department found no evidence that any of Attorney Campbell's correspondences, absent his June 11, 2008 request, represented a request for documents under the APRA. As to Attorney Campbell's June 11th request, the CRMC's primary argument within its response was that it did not possess the requested records; therefore, the CRMC had no obligation to respond to the request until the legal decision was drafted. However, the CRMC's position was inconsistent with the APRA. Therefore, this Department found that the CRMC violated the APRA by failing to respond to Attorney Campbell's June 11th request within ten (10) business days.

VIOLATION FOUND.

Issued: September 30, 2008

PR 08-34

St. Pierre v. Burrillville School Department

Complainant alleged that the Burrillville School Department violated the APRA when it denied his APRA request for "the amount of all legal fees billed to the Burrillville School Department by the Law Office of Brennan, Recupero, Cascione, Scungio & McAllister, LLP, during the time period that began the 2006 fiscal year to the present date [September 17, 2008]." Additionally,

complainant alleged that he requested, but was denied, the "date the appointment of the School Committee's current legal counsel... will expire or come under review." The Burrillville School Department provided the requested amount of legal fees though the end of the 2008 fiscal year and stated they did not realize complainant wished information after that date. This Department considered Assassination Archives and Research v. Central Intelligence Agency, where the Court stated that "it is the requester's responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested."¹ 720 F.Supp. 217 (D. D.C. 1989). This places the onus of clarity upon the requestor. This Department determined that although it was conceivable that a reasonable mind could have interpreted the request to be for the fiscal years, in this instance, interpreting the request strictly and literally, it requested "to the present." Accordingly, the School Department violated the APRA. In regards to the allegation that complainant was denied the "date that the re-appointment expires or comes under review," the evidence presented showed that the School Department answered the request.

VIOLATION FOUND.

Issued: November 25, 2008

PR 08-35 Ambeault (2) v. Lincoln School Department

Complainant alleged that the Lincoln School Department violated the APRA when it did not fully respond to her APRA request for copies of billing statements for legal fees. Ms. Ambeault acknowledged that the School Department's response was timely and contained the numerical figures for the items she sought, but believed that the School Department violated the APRA by not providing her an actual copy of the records. After reviewing the facts of the case, this Department found that under the APRA, a person must be allowed to "inspect and/or to copy" the actual

¹ Rhode Island's Access to Public Records Act was modeled after the Federal Freedom of Information Act. See e.g., Rhode Island Federation of Teachers, AFT, AFL-CIO v. Sundlun, 595 A.2d 799, 802-03 (R.I. 1991). Accordingly, it is appropriate to reference applicable federal authority to interpret our state public records law.

records. Therefore, the School Department violated the APRA by failing to provide her a copy of the actual records.

VIOLATION FOUND.

Issued: December 5, 2008

PR 08-36

Azar v. Lincoln School Department

Complainant alleged that the Lincoln School Department violated the APRA when it extended the time to respond to her APRA request an additional twenty (20) business days for good cause, and by not fully responding to her APRA request for copies of billing statements for legal fees. Ms. Azar acknowledged that the School Department's eventual response contained the numerical figures for the items she sought, but she believed that the School Department violated the APRA by not providing her an actual copy of the records. After reviewing the facts of the case, this Department found that a specific reason for "good cause" existed. Namely, the two (2) years of documents needed to be reviewed by the School Department. However, under the APRA, a person must be allowed to "inspect and/or to copy" the actual records. Therefore, the School Department violated the APRA by failing to provide her a copy of the actual records.

VIOLATION FOUND.

Issued: December 17, 2008

ACCESS TO PUBLIC RECORDS ACT ADVISORY

ADV PR
08-01

In Re: Police Department Policies (Advisory Opinion)

An APRA advisory request was filed by the North Providence Police Department in regards to the release of names and addresses of complaining and percipient witnesses by the North Providence Police Department. Law enforcement agencies are not required to release any records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." See R.I. Gen. Laws § 38-2-2(4)(i)(D)(c). A balancing test must also be applied to determine if a document should be disclosed, in whole or in part. Previous advisory opinions state that names may be redacted after a balancing test is conducted. This test requires that the privacy interests of victims and witnesses must be balanced against the public interest in disclosure. This Department notes that the policy of automatically redacting personal information is inconsistent with the APRA. The balancing test used in Providence Journal Company v. Kane and U.S. Dept. of Justice v. Reporters Committee

for the Freedom of the Press should be followed by the North Providence Police Department.

Issued: March 28, 2008.

ADV PR

08-02

In Re: Vendor List Request (APRA Advisory Opinion)

An advisory opinion was requested regarding an APRA request received by a company seeking information clearly for commercial purposes. Rhode Island General Laws § 38-2-6, which prohibits the use of "public records pursuant to this chapter to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the public body," was declared unconstitutional. Accordingly, R.I. Gen. Laws § 38-2-6 cannot be used as a basis to deny access.

Issued: April 22, 2008.

ADV PR

08-03

In Re: Town of Smithfield Advisory Opinion regarding APRA request

Town of Smithfield submitted a request for an advisory opinion concerning "whether the name of a complainant who has filed a complaint with the zoning official for the Town is a public record." Initially, we noted that all investigative records concerning a possible violation of statute, rule, or regulation are exempt from public disclosure, except records of final actions. See R.I. Gen. Laws § 38-2-2(4)(i)(P). The Town may redact the complainant's name if the privacy interests of the complainant outweigh the public interest in disclosure. The Town cannot automatically redact the name and should conduct a balancing test in every instance. The balancing test used in Providence Journal Company v. Kane and U.S. Dept. of Justice v. Reporters Committee for the Freedom of the Press should be followed by the Town of Smithfield.

Issued: June 6, 2008.

ADV PR

08-04

In Re: Judicial Nominating Commission

The Judicial Nominating Commission (JNC) requested an advisory opinion as to whether letters of recommendation submitted by or on behalf of applicants were specifically exempt from APRA under the second clause to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I), which provides "that certain information shall not be deemed public records including information in personnel files maintained to hire,

evaluate, promote or discipline any employee of a public body." Relying upon the Supreme Court's guidance in The Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982) and Pawtucket Teachers Alliance v. Brady, 556 A.2d 556 (R.I. 1989), this Department rejected the argument that these recommendations could be exempt in *total* under the second clause of § 38-2-2(4)(i)(A)(I) without further analysis. Because this Department was not provided access to the letters, it could not be determined if part of the letters could be exempted. Id. It was conceivable that requested letters may contain "personal or medical information" and therefore, be exempt (either in whole or part) pursuant to the second clause of R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

END OF APRA SUMMARIES

